

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICKY A. PLESIA,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF SECURITY

Defendant.

CASE NO. 5:08 CV 214

JUDGE DONALD C. NUGENT

ORDER ADOPTING
REPORT AND RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Benita Y. Pearson. The Report and Recommendation (ECF #27) is hereby ADOPTED. Petitioner sought judicial review of the Social Security Administration's final decision denying his applications for Supplemental Security Income Disability. Magistrate Judge Pearson found that the ALJ's decision was supported by substantial evidence and that the ALJ applied the appropriate legal standards. Mr. Plesia timely filed his objections to the Magistrate's Report and Recommendation. (ECF #28).

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objection has been made. *See* FED. R. CIV. P. 72(b). The Court

finds that Petitioner's objections raise no arguments (factual or legal) that have not been fully addressed by the Magistrate's Report and Recommendation. Mr. Plesia claimed a disability based on a back disorder and chronic pain, however he did not allege that his impairment meets or equals any specific impairment listed in Appendix 1 of 20 C.F.R. Part 404, Subpart P. (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), and 416.926). Further, even though Mr. Plesia bore the burden of showing that his impairments meet or equal a listed impairment, he failed to offer any medical evidence that his impairment met this criteria. (*Price v. Heckler*, 767 F.2d 281 (6th Cir. 1985); ALJ Tr. 16). The medical evidence presented from the State Agency medical consultant, and from Mr. Plesia's own treating physicians was consistent and led to the conclusion that Mr. Plesia's impairment did not rise to the level of a listed impairment. (ALJ Tr. 16, 19). Any objection that these reports do not support the ALJ's conclusions because they were outdated is emasculated by the Plaintiff's failure to offer any more recent medical opinions into evidence, especially in light of the fact that he bears the burden of persuasion on this issue. The Court finds Magistrate Judge Pearson's Report and Recommendation to be thorough, well-written, well-supported, and correct on this and all other issues addressed therein. The Magistrate's Report and Recommendation fully and correctly addresses all of the Plaintiff's claims and the Plaintiff's objections are unwarranted. This Court, therefore, adopts the Magistrate's Report in its entirety. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). The Social Security Administration's final decision denying Mr. Plesias's application for Supplemental Security Income and Disability Insurance Benefits is

affirmed. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: March 20, 2009